IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 228 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMESHBHAI PARSHOTTAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 228 of 2000

MR RAMNANDAN SINGH for the Petitioner

MR P.R.ABHICHANDANI, APP for the Respondent

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/08/2002

ORAL JUDGEMENT

This Criminal Revision Application is preferred against judgement and order rendered by the Additional Sessions Judge, Vadodara in Criminal Appeal No. 76 of 1998 on 3.4.2000. The said appeal arise out of a

judgement and order rendered by Chief Judicial Magistrate, Vadodara in Criminal Case No. 2342 of 1994 on September 30, 1998.

2. An FIR came to be lodged by wife of present revisioner with Gorva Police Station alleging offences of cruelty punishable under Section 498(A), coupled with 506(2) and 114 of the IPC. Following the FIR, the offences were registered, and after investigation, police filed chargesheet against the present revisioner as well as one Ayudh Purshottambhai Patel who happens to be his brother. The accused person pleaded not guilty to the charge. The prosecution, therefore, led the evidence. The Trial Court after considering evidence led by the prosecution came to the conclusion that the prosecution was successful in establishing charges punishable under Section 498(A) against the present revisioner. The Trial Court acquitted the other accused. After hearing the revisioner on question of quantum of punishment the Trial Court sentenced him to undergo simple imprisonment for a period two years and imposed a fine of Rs.3000/-.

The said judgement and order was carried by the revisioner in appeal before the Sessions Court, and the Sessions Court, by the judgement and order impugned herein, dismissed the appeal negativing the contentions raised by the revisioner. The revisioner has, therefore, approached this Court with this Revision Application.

3. Learned advocate Mr.Ramnandan Singh has taken this Court through the record and proceedings. He has raised following contentions;

a) The Trial Court has accepted case of the prosecution of cruelty on the ground that the revisioner doubted the character of the complainant, his wife, as is emerging from a suggestion put to a witness during cross-examination, whereas, in fact there is nothing in the complaint or in the evidence of the complainant to indicate that present revisioner used to doubt her character.

b) The complaint and the oral evidence of witness even if taken on face value do not indicate any cruelty meted out by the revisioner which can be said to be sufficient to force the complainant to commit suicide, and therefore, it cannot be considered as cruelty as contemplated

under Section 498(A) of the IPC.

c) There is no evidence either oral or written in form of medical certificate or deposition of a Doctor to support the say of the complainant about physical cruelty.

d) The evidence indicates that the complainant does not permit the revisioner to enter the house which would mean that she is quite strong, and therefore, the case of the prosecution that, the revisioner meted out cruelty to the complainant ought not to have been accepted.

e) There is evidence to indicate that the revisioner was beaten by police in the police station when the complainant was present. This reflects that the complainant has made use of relations with police officer on the basis of the complainant and the police officer daughter studying together.

f) The evidence read as a whole would indicate that the police officer is at the back of the entire episode.

g) The marriage span of the revisioner with the complainant is of 18 years. There has been no dispute in past, and the story is therefore, got up one.

h) It is urged that the sentence is disproportionate to the offence. The petitioner will lose his job and although this may be a punishment inflicted on the revisioner which would eventually punish his wife-the complainant and his daughter.

4. Learned Advocate Mr. Ramnandan Singh placed reliance on the decisions of INDRASINGH M RAOL V. STATE OF GUJARAT, 1999(4) CRIMES 468, BHARGAV KUNDALIK SALUNKHE V. STATE OF MAHARASHTRA, 1996 CLJ 1228 and ASHISH BHUPENDRABHAI GANDHI V. STATE OF GUJARAT, 1996(1) GLH 1018.

5. The revision is opposed to by learned APP Mr.

P.R.Abhichandani. He submitted that this is a revision application against concurrent findings of the two Courts below. The contentions which are raised in form of reappreciation of evidence are not permissible in a revision application, and therefore, Court may not exercise revisional jurisdiction.

Mr. P.R.Abhichandani submitted further that, apart from the suggestion put to PW-7 there is evidence to indicate cruelty both physical and mental. There is evidence of the complainant as well as her daughter Mital both of whom categorically state about illicit relation of the revisioner with one Dollyben. Husband of Dollyben has also been examined, who has, in terms stated that his wife had illicit relations with revisioner and revisioner used to ill-treat the complainant. Mr. Abhichandani, therefore, urged that this revision may not be entertained.

6. Having regard to rival side contentions, at the outset, it may be noted that the scope for interference in exercise of revisional jurisdiction in concurrent findings of the Courts below is very limited. Reappreciation of the evidence in exercise of revisional jurisdiction has also been not approved in various judgements of the apex Court. Reference can be had to STATE OF KARNATAKA V. APPA BALU INGALE, AIR 1993 SC 1126.

7. With the above proposition in mind, if the contentions raised by the learned advocate Mr.Ramnandan Singh are considered, all that is argued is that, the Courts below have committed error in appreciating evidence. All the contentions, if seen, are based only on appreciation and propriety of acceptance or rejection of evidence adduced by the prosecution.

8. Despite that, even if a close scrutiny is given to the evidence, there appears no reason even to come to a conclusion that an error is committed in appreciating the evidence by the Courts below.

9. There is evidence of complainant Anujaben Exhibit-8 and Mital Ramesh Patel Exhibit-16 who both categorically state about the revisioner having illicit relations with Dollyben and ill-treating, beating and threatening to throw out the complainant. The factum of ill-treating the complainant is supported by Dharmendra Rao Exhibit-26, husband of Dollyben, who speaks of the revisioner's illicit relations with Dollyben and the revisioner ill-treating the complainant. There is

evidence of Dipak Maganlal Exhibit-13 who happens to be the brother of the complainant.

10. Having gone through these pieces of evidence, despite a close look, this Court is not able to find any reason to accept the contentions that cruelty was not meted out to the complainant. Reliance was placed by the learned advocate Mr. Ramnandan Singh on a decision of this Court in the case of INDRASINGH M RAOL V. STATE OF GUJARAT, 1999 (4) CRIMES 468 to say that every cruelty is not cruelty contemplated under Section 498(A) and it would not attract the provision of the said incident. On going through that judgement, it is found that, what is observed therein is that, a solitary incident cannot be interpreted to be a sufficient evidence of cruelty. In the instant case, as the evidence indicates, it was not on a solitary occasion that the complainant was meted out with physical cruelty. A chain of multiple events are indicated when complainant was meted out with cruelty. There is sufficient evidence to indicate that the revisioner is maintaining illicit relations with Dolleyben. This act itself is sufficient to constitute mental cruelty when such relations are developed after 18 years of marriage life. It is not difficult to visualise the agony of a wife in such a situation. Mental plight of a wife put in such a insecure situation coupled with physical harassment has to be considered in such a case. Therefore, it is not possible to accept the contention that there is no evidence to constitute cruelty as contemplated under Section 498(A) of the IPC. The decision relied upon by the learned advocate Mr. Ramnandan Singh also cannot come to the rescue of the revisioner.

11. About absence of medical evidence and about physical cruelty, it has to be noted that there cannot be any straight jacket formula for rejecting evidence of a wife in absence of independent medical evidence. The Indian Society has to be accepted as it is. The women folk is yet to come out of the submissive mental frame and report every cruelty or every evidence to a Doctor or to an outsider. It is only when the situation goes out of bearing capacity that events are reported to outsiders or even to relatives. Apart from this it has to be noted that besides the complainant there is evidence of Mital who happens to be daughter of the complainant and the revisioner. She is a grown up child of about 13 years of age. Reasonable understanding can be accepted of her. She has no reason to depose falsely against her father and therefore the contention cannot be accepted. Again, at the cost of repetition it may be noted that this is

reappreciation of evidence which exercise cannot be undertaken by this Court while exercising revisional jurisdiction.

12. Contention regarding the complainant not permitting the revisioner to enter the house and, therefore, drawing of a presumption about her being physically strong, and thereby drawing a presumption that the revisioner could not have meted out physical cruelty to the complainant, is also too farfetched and remote to be accepted. It is true that in evidence during cross-examination the complainant had accepted that she did not permit him to enter the house but very next sentence says that he beats her. Not permitting a person to enter the house by closing the door is one aspect and being strong enough to resist physical cruelty or violence is another aspect. No suggestion is made regarding this contention during cross-examination.

13. In view of the above discussions, all the contentions raised by the learned advocate for the revisioner fall within the realm of reappreciation of evidence, which, this Court is not expected to do, and therefore, those contentions are not accepted. There are concurrent findings of two Courts below. These findings are of fact and no reasons are indicated for any interference by this Court. The revisioner is not able to indicate any conclusion arrived at in absence of evidence or any perversity in appreciation of evidence, and therefore, contentions cannot be accepted.

14. So far as the quantum of the punishment is concerned, the section provides a punishment of imprisonment for a term which may extend to 3 years and fine. The Court below has sentenced the revisioner to undergo simple imprisonment for a period of two years and levied a fine of Rs.3000/- and in default on payment of fine to under simple imprisonment for a further period of one month. Much is argued about the revisioner losing his job, his readiness to compensate the complainant and ultimate suffering of the complainant and her daughter. There is some substance in the contention that the wife and the daughter of the revisioner may ultimately suffer if the revisioner has to go to jail, but that cannot be a criteria for the reason that it is part of the system prevailing in the Country.

15. There is no reason, therefore, to interfere with the quantum of punishment also. Revision, therefore must fail. Same is dismissed. Rule discharged.

16. The revisioner shall surrender to the custody within a period of four weeks from today.

(A.L.Dave,J)

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